

12. Proposed Rule 25.143 does not comport with the financial realities of financing a global satellite system of this magnitude. Traditional bank loans are not likely to be the primary source of initial funding. All of the systems will need to rely initially upon funding by strategic partners, as a basis for second-stage bank loans or public offerings. It is wholly unrealistic to expect any of these investors to commit hundreds of millions of dollars on a non-contingent basis at the outset. Any reasonable investor expects to retain the ability to assess a project at critical milestones in order to consider relevant market and financial developments.

**The Proposed Standard is
Inequitable and Unrealistic**

13. Perhaps most importantly, the proposed standard will, in my view, discriminate unfairly between companies with other lines of business (often with no relation to the proposed satellite venture) and new entrants. Companies with other business activities are permitted to rely on current assets and operating income (from those activities) to satisfy financial requirements, without any demonstration that the assets or income will actually be dedicated or committed to the satellite project. A large company with ongoing lines of business, wholly unrelated to the proposed satellite system, can therefore submit a balance sheet reflecting credit and cash reserves without any intention

or ability whatsoever to apply those assets to the satellite project. Nor could the company be forced to do so if the project is judged at some point downstream to be uneconomic.

14. There is no rationale for concluding, on the basis of an unrelated balance sheet or financial statement, that a company will proceed with satellite system implementation. Indeed, satellite history offers several examples, at least, of large companies that failed to commit the necessary resources to go forward with or sustain a satellite project (e.g., SBS). In this regard, the subsidiary of an existing company is no different than a "start-up" or entrepreneurial venture, and should be similarly required to demonstrate committed funds.

15. Under the proposed standard, new entrants must provide evidence of fully negotiated loans or commitments. This is a far more onerous standard than will be imposed on companies with other lines of business. Outside investors, like company management, must have the flexibility to evaluate market conditions periodically. To be equitable, the Commission would need to require applicants relying on current assets and income to demonstrate that funds reflected on the balance sheet or financial statement are irrevocably committed to the project. This non-contingent standard would be the equivalent of the showing that is imposed on new entrants (and is proposed to indicate the artificial nature of the standard in both cases.)

16. If the Commission decides to allow applicants to rely upon current assets and operating income, it should clarify that new entrants will be permitted to rely upon the current assets and operating income of their investors and strategic partners to demonstrate financial qualifications.

Conclusion

17. In my expert opinion, it is far more appropriate for the market and investment community to make financial determinations on the basis of the operator's credit-worthiness and business plan, than for a government agency to do so on the basis of artificial paper showings which have little bearing on actual intention to proceed. The Commission should err on the side of allowing companies to move forward with system implementation and avoid imposition of unrealistic and inequitable financial requirements that may penalize particular market strategies. Any financial standards adopted by the Commission should provide maximum flexibility for the emergence and development of diverse, competing systems in this new satellite service.

The foregoing is true and correct to the best of my
knowledge and belief.

Respectfully submitted,

David Seth
Davinder Sethi

Dated: May 4, 1994

EXHIBIT B



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

April 24, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW Suite 814
Washington, D.C. 20554

Dear Chairman Hundt:

I am contacting you regarding a matter currently pending before the Commission pursuant to my responsibilities under the Regulatory Flexibility Act¹ and the Small Business Act.² I am concerned that, due to unequal and unduly burdensome financial qualification standards for smaller satellite operators, the Commission is on the verge of eliminating a potentially viable smaller competitor, Mobile Communications Holdings, Inc. ("MCHI"), from the low-earth orbit mobile satellite services ("Big LEO") market.³

The Office of Advocacy has had a long history of concern with unequal and burdensome financial qualification standards for small businesses set by the Commission in the satellite industry. The Office filed comments addressing this same issue with the Commission as early as the domestic fixed-satellite proceeding in 1985.⁴ The Commission responded to these concerns by establishing a two-stage financial qualification standard for

¹The Regulatory Flexibility Act of 1980, as amended, Pub. L. No. 96-354, 94 Stat. 1164 (1980), codified at 5 U.S.C. sec. 601 et seq.

²The Small Business Act, as amended, Pub. L. No. 85-536, 72 Stat. 384 (1958), codified at 15 U.S.C. sec. 631 et seq.

³The Office of Advocacy submits this correspondence pursuant to Part 1 section 1204(b)(5) of the Commission's rules. 47 C.F.R. 1.1204(b)(5)

⁴Letter from Frank S. Swain, Chief Counsel for Advocacy, Small Business Administration, to the Federal Communications Commission, dated June 27, 1985.

The Honorable Reed E. Hundt
April 22, 1996
Page 2

smaller companies for separate international satellite systems.⁵

The Commission currently has before it an appeal of an order by the International Bureau deferring MCHI's application for a license to construct and operate a Big LEO satellite system on the basis of inadequate financial qualifications.⁶ It is not generally the practice of the Office of Advocacy to comment on individual applications for licenses at the Commission. Moreover, the Office of Advocacy expresses no opinion as to the adequacy of MCHI's financial showing in the instant application. The Office of Advocacy is deeply concerned, however, that this order represents a case in point of the Commission's *de facto* unequal financial qualification standards for smaller companies. The Bureau Order could effectively eliminate a potential competitor and one of the few small businesses that has had measurable success in entering this new market. To uphold the Bureau Order would establish further precedent for the Commission's overly stringent financial qualification standards and erect an artificial market entry barrier to virtually all small competitors.

It is worth giving the Bureau Order closer scrutiny, not so much to judge the adequacy of MCHI's financial showing but to highlight the burden it places on smaller applicants like MCHI. The order sets an extraordinarily high evidentiary threshold in judging each financial source cited by MCHI. It is certainly necessary and appropriate for the Bureau to proceed with caution in this area. It is, however, significant that the Bureau rejects or dramatically diminishes the value of every single financing source cited by MCHI. Their judgment may be correct in all instances but it is difficult to believe that none of these sources is deserving of the credibility vested in it by MCHI. Given the nature of financing such a large project, could any company meet such a burden? Could MCHI's larger competitors meet such a burden even at this point in time? There is surely something inequitable in such an unevenly applied standard, particularly given that it is a smaller business that is in

⁵Establishment of Satellite Systems Providing International Communications, 101 F.C.C. 2nd 1046, 1164 (1985).

⁶In re Application of Mobile Communications Holdings, Inc. for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/2483.5-2500 MHz Band, File Nos. 11-DSS-P-91(6), 18-DSS-P-91(18), 11-SAT-LA-95, 12-SAT-AMEND-95, DA 95-132 (rel. January 31, 1995) ("Bureau Order").

The Honorable Reed E. Hundt
April 22, 1996
Page 3

question here.⁷

The contrast with the Commission's treatment of larger applicants could not be more striking. The Commission's 1994 order concerning the Big LEO industry states "[a]pplicants relying on internal financing need not set aside specific funds for their systems."⁸ The Big LEO Order continues, "we require only a demonstration of current assets or operating income sufficient to cover system costs."⁹ There is no requirement that funds be "fully negotiated" or irrevocably "committed" as with smaller companies.

Moreover, the Big LEO order openly presumes that in order to build and operate their systems, larger companies will not rely solely on the assets that form the basis of their financial showing to the Commission. The Big LEO Order acknowledges even the largest corporations' need to raise external financing: "Highly capitalized companies possess more collateral and, thus, are in a better position to borrow money than thinly capitalized companies"¹⁰ This is, of course, a realistic presumption that is born out in practice.¹¹ Thus, the order implicitly sanctions applications from larger corporations who have not finalized their borrowing at the time of application, let alone successfully secured irrevocable commitments of the kind required of MCHI by the Bureau Order.

In sum, there is a de facto two-tier financial qualification system, favoring larger companies and handicapping smaller ones. Whatever the merits are of MCHI's financing efforts to date, they

⁷The high burden of proof the Bureau applies to MCHI would be appropriate if the Commission demanded there be no risk associated with awarding a license to any applicant -- a standard foreign to the Commission's mission and the overall nature of telecommunications enterprises, in general.

⁸In re Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 F.C.C. Rcd. 4936 (1994) ("Big LEO Order") at para. 31.

⁹Id.

¹⁰Id.

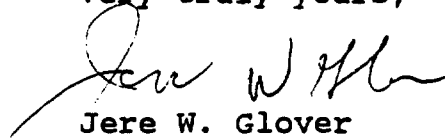
¹¹MCHI's larger competitors have already been awarded licenses and are pursuing a wide range of external financing options -- few, if any, of which were "fully negotiated" or "committed" prior to their securing licenses from the Commission.

The Honorable Reed E. Hundt
April 22, 1996
Page 4

deserve to be judged in the same light as their competitors'. Both the Regulatory Flexibility Act and competitive telecommunications policy would support leveling this unequal burden that falls so disproportionately on smaller competitors.

For these reasons, the Office of Advocacy urges the Commission to grant MCHI's appeal of the Bureau Order and require the Bureau to reexamine its overly stringent financial qualification standards for smaller companies, in general.

Very truly yours,



Jere W. Glover
Chief Counsel

EXHIBIT C

United States Senate

WASHINGTON, DC 20510

July 19, 1995

Mr. Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Dear Mr. Hundt:

The Congress is currently working on legislation to enable and promote more competition in the telecommunications marketplace because technology has rapidly made the existing law and subsequent regulatory implementation obsolete.

The recent use by the FCC of a "stringent financial showing" as a major criterion for granting mobile satellite system (MSS) licenses appears to unduly constrain future marketplace competition and effectively preclude the public from enjoying the subsequent benefits for such systems.

The use of financial data as a criterion evolved from 47 CFR 25.140 and is based on protecting the public from a financially weak applicant. It assumes 1) the spectrum in question is in high demand and cannot support every applicant, and, 2) the award to a financially weak applicant precludes another applicant from receiving a license thereby "injuring the public" by delaying the availability of a financially stronger applicant's services.

While the "Big LEO" spectrum is in demand, the use of Code Division Multiple Access (CDMA) and digital technology, which four of the applicants are promoting, allows multiple use of the spectrum without interference and mitigates former concerns regarding "one applicant, one slot". Nonetheless, the FCC, in its 31 January, 1995 ruling, chose to defer licenses to two technically qualified applicants based on their inability to convince the FCC of their "stringent financial showing". Both have systems that forecast public access to lower cost services.

In addition, the FCC's ruling by definition appears unfairly biased towards large asset companies since they can claim to use internal funding sources and are not required to show "irrevocable commitment" by financial patrons. In contrast, smaller firms, who by necessity must plan to finance their

projects from largely external sources, must show the financial source's "irrevocable" commitment. In short, the FCC appears, on the basis of protecting the public, to have assumed the role of business expert in determining the standards to meet the criterion. Having done that, the burden of proof falls squarely on the back of the applicant.

This situation quickly becomes a "Catch-22" for small firms because banking and financial institutions who are more expert at evaluating financial risk than the government can now consider the FCC decision as a negative event - an event that impacts their decision to follow through with preplanned support. The smaller companies' only strong suit with its external sources is the innovative excellence of its planned product. In this competitive environment, absent a trust fund, there are no "irrevocable commitments".

Historically, America has led the world in new and innovative technology. Our laws and implementing regulations continue to change in order to provide an environment for proactive entrepreneurs, who must plan on external financing, joint ventures, and partnerships, to succeed. We should not interfere with that process unless there is irrefutable proof that forbearing such criteria as outlined above will negatively impact upon the public marketplace. By implementing the financial standard for MSS licenses, we believe that the FCC has unintentionally created an artificial barrier which effectively denies future public access to lower cost services and stifles small company entrepreneurship from which much of past innovative technology has emerged.

Accordingly, we respectfully request your personal review, and that of the other commissioners, of the 31 January 1995 decision regarding the applicants whose request for license was deferred. We urge you to consider approval of those applicants that did show significant preplanned support comparable to the non-committed assets of applicants whose licenses were approved. We would most appreciate the results of your decision and review within 30 days.

Sincerely,

Richard Shelby
Lyne Craig
Connie Mack

Frank Lott
Paul Cochran
James B. ...

JOHN CONYERS, JR.
14TH DISTRICT, MICHIGAN

CONGRESSIONAL
RANKING MEMBER
JUDICIARY

SUBCOMMITTEE ON COURTS AND
INTELLECTUAL PROPERTY
SUBCOMMITTEE ON THE
CONSTITUTION

Congress of the United States
House of Representatives
Washington, DC 20515-2201

WASHINGTON OFFICE:
2428 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2201
PHONE: 202-225-8128

DETROIT OFFICE:
600 FEDERAL BUILDING
231 W. LAFAYETTE
DETROIT, MI 48226
PHONE: 313-661-6670

May 16, 1996

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Dear Chairman Hundt:

As you know, I have long been a strong believer in and advocate of opportunities for small and minority-owned businesses. I recently learned of the April 24, 1996 letter to you from Jere Glover, Chief Counsel, U.S. Small Business Administration (SBA), Office of the Chief Counsel for Advocacy, which concerns the application of Mobile Communications Holdings, Inc. (MCHI) for licensing of the Ellipso low-Earth orbit mobile satellite system (also known as "Big LEO"). The letter identifies MCHI as "one of the few small businesses that has had measurable success in entering this new market" but raises concerns that the "unequal financial qualification standards" imposed on smaller satellite operators like MCHI are creating unnecessary and unfair barriers to market entry and fair competition.

While I do not seek to comment on any specific matter before the FCC with regard to MCHI, I want to echo the sentiment expressed by SBA that the FCC should be attempting to maximize small business participation in major projects such as this to the extent authorized by law. Congress has repeatedly expressed a bipartisan consensus that federal regulatory agencies should attempt to maximize opportunities for small businesses wherever possible. The Regulatory Flexibility Act, the Small Business Act, and the new Telecommunications reform law all favor such an approach.

In addition, it is important that federal regulatory agencies not set unreasonable or discriminatory financing requirements on small businesses that seek market entry as is alleged by the SBA in the case of MCHI. Finally, I would also echo the concern expressed in the SBA letter that the administrative appeals process within the FCC be as expeditious as possible so as not to unfairly disadvantage the competitive interests of small businesses awaiting FCC.

Sincerely,

John Conyers, Jr.
Member of Congress

JOHN CONYERS, JR.
14TH DISTRICT, MICHIGAN

CONGRESSIONAL
RANKING MEMBER
JUDICIARY

SUBCOMMITTEE ON COURTS AND
INTELLECTUAL PROPERTY

SUBCOMMITTEE ON THE
CONSTITUTION

Congress of the United States
House of Representatives

Washington, DC 20515-2201

WASHINGTON OFFICE:
2426 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2201
PHONE: 202-225-6128

DETROIT OFFICE:
608 FEDERAL BUILDING
231 W. LAFAYETTE
DETROIT, MI 48226
PHONE: 313-861-6670

August 21, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
Suite 814
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

I appreciate your reply of July 15, 1996 to my earlier letter regarding Mobile Communications Holdings, Inc. (MCHI) and its Ellipso low-earth orbit mobile satellite system.

I am returning to the issue once more because I want to make very clear how I -- and I believe many of my colleagues on both sides of the aisle -- view the small business issue as it relates to the Big LEO and other relevant satellite licensing proceedings.

As Section 257 of the Telecommunications Act of 1996 makes clear, we want to see small business market entry barriers removed. This involves not only the formal inquiry procedure the FCC now has underway, which I commend. Its intent is also that you look for ways to interpret the rules you have established in current proceedings so that you remove any market entry barriers to small businesses. That is what I believe the SBA meant in its letter sent to you on April 24, 1996, regarding MCHI and the Big LEO proceeding.

It is not enough to observe, as you do in your letter, that smaller service providers can buy and resell capacity from satellite system operators. That misses the point. The Telecommunications Act mandates the removal of barriers to telecommunications ownership by small businesses. Small businesses should be given access to the market place and allowed to compete.

The stringent financial test applied in the Big LEO situation, which allows some companies to qualify solely on the basis of corporate assets and operating income (even though not committed to the project), strongly favors large, established corporations. That is wrong, unfair and is a market entry barrier for smaller enterprises. The FCC has previously found creative ways to foster small business participating in capital-intensive services, such as PCS, without using stringent financial standards as a bar.

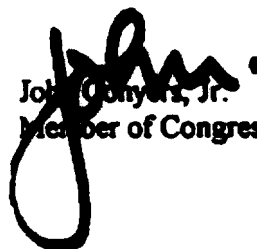
It also bears emphasis that the FCC has historically fostered entrepreneurship and competition in the satellite industry, with resulting benefits to consumers, through more flexible

financial standards which have contributed to the success of companies such as PanAmSat, Orion and Columbia. The Commission's recent reversals of these long-standing and successful policies is even more inexplicable in light of recent legislation, such as the Telecommunications Act of 1996 and the Small Business Regulatory Enforcement Fairness Act of 1996, reaffirming national policies with respect to elimination of regulatory hurdles for small businesses.

I also note that your concerns about "warehousing" are misplaced because there is evidence that adequate spectrum exists to accommodate all of the applicants in the Big LEO proceeding and no new companies have filed applications or otherwise expressed interest in the relevant frequency bands. In addition, the FCC has established construction and implementation milestones for the Big LEO systems which I understand are intended to deal with the warehousing problem.

I hope you will find a way to correct the current inequitable situation. I believe the FCC currently has the authority to do so. I urge you to act accordingly.

Sincerely,



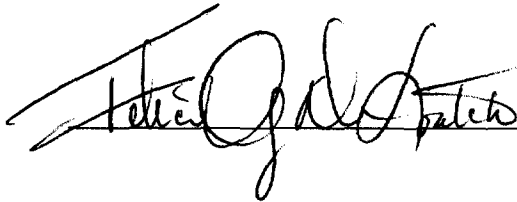
John Conyers, Jr.
Member of Congress

CERTIFICATE OF SERVICE

I, Felecia G. DeLoatch, do hereby certify that a true and correct copy of the foregoing document was sent by first-class mail, postage prepaid, or hand-delivered, on this 10th day of September, 1996, to the following persons:

- * Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554
- * Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554
- * Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554
- * Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554
- * Julius Genachowski, Esq.
Special Assistant
Office of the Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554
- * William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

- * Cathy Sandoval
Office of Communications Business Opportunities
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, D.C. 20554
- * S. Jennell Trigg
Office of Communications Business Opportunities
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, D.C. 20554
- * Donald Gips
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554
- * John Stern, Esq.
Senior Legal Advisor to the
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554
- * Jere Glover
Chief Counsel, Office of Advocacy
Small Business Administration
409 3rd Street, S.W., Suite 7800
Washington, D.C. 20416



A handwritten signature in black ink, appearing to read "Jere Glover", is written over a horizontal line.

* Hand Delivered